



# MINNESOTA JUDICIAL BRANCH

## Joint Proposal for Housing Court Rule Changes From the Second and Fourth Judicial District Housing Courts

**Date:** June 18, 2018

**To:** Chief Judge Ivy S. Bernhardson, Hennepin County District Court  
Chief Judge John H. Guthmann, Ramsey County District Court

**From:** Judge Shawn M. Bartsh, Referee Elizabeth Clysdale, Michael Upton  
Referee JaPaul Harris, Referee Mark Labine, Referee Amy Draeger, Referee Melissa Houghtaling, Anna Lamb, Lisa Lane, Lindsay Popovich, Elizabeth Wendt

### **Background:**

In May 2017, Chief Judge Guthmann submitted a proposal to modify Housing Court Rules 601 and 603 for consideration to the Committee on General Rules of Practice (GRP). The proposal had been shared with the Fourth District and we provided a response that was subsequently shared with the GRP chair, Judge Halsey.

On June 23, 2017, Michael Johnson, Senior Legal Counsel and staff attorney to the GRP, sent an email to the judicial and administrative leadership in the Second and Fourth Districts and asked that we work together to gather stakeholder feedback and submit a joint report or recommendations to the Advisory Committee if possible.

In August, Housing Court referees and administration leaders worked with the Fourth District Court's Research Department to develop and conduct a survey of stakeholders who appeared in either Ramsey or Hennepin County Housing Court within the past year. The survey was sent out by each District and the results were shared and discussed both internally and jointly.

After hearing concerns in January about our initial proposed change to Rule 603, a revised proposal was sent to stakeholders for additional feedback. It is apparent that there is not agreement from stakeholders concerning the use of agents in Housing Court. This recommendation presents a compromise between the status quo and the elimination of agents in most Housing Court hearings.

After working together to solicit and review stakeholder feedback, our two Housing Courts have come to consensus on the following recommendations.

### **Recommendations:**

- 1. Adopt Housing Court Rule Housekeeping Changes.** The attached changes include non-controversial changes to update language, current practices and conform with statutory changes. These have broad stakeholder support.

**2. Make no change to Rule 601:** After gathering stakeholder feedback, we jointly recommend that no change be made to include language related to Minnesota Appellate Court decisions. We agree that Appellate Court decisions must be considered as they are now and that there is no need to call out this requirement.

**3. Proposed change to Rule 603:**

Current Rule 603	Proposed Change to Rule 603
<p>An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing.</p> <p>No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.</p>	<p>An eviction action shall be brought in the name of the owner of the property or other person entitled to possession of the premises.</p> <p>An authorized agent may commence an action to recover and retain possession to real property. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing.</p> <p>An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.</p> <p>Only agents who are licensed attorneys-at-law may represent an artificial entity such as a corporation, limited liability company, or limited liability partnership in an evidentiary hearing conducted in Housing Court.</p>
<p><b>Task Force Comment--1991 Adoption</b>  <i>The Task Force expresses no opinion about whether or the extent to which the role of lay advocates constitutes the unauthorized practice of law. See Minnesota Statutes, section 481.01, et seq. (1990).</i></p>	<p><b>Task Force Comment--2018 Adoption</b>  <i>Rule 603 was amended to require that only licensed attorneys may represent an artificial entity in an evidentiary hearing conducted in District Court. Agents may continue to appear at first appearance hearings and continue to represent principals in negotiating settlement agreements at these first appearance hearings.</i></p>

The use of agents in Housing Court is currently allowed by Rule 603 and Minnesota Statute 481.02, subd. 3 (12)(13) and (15). Since the rules were promulgated in 1991, four appellate decisions have held that only lawyers may represent certain artificial entities in court. *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 426, 429 (Minn. 1992), (a corporation may only appear in court by an attorney); *Save Our Creeks vs. City of Brooklyn Park*, 699 N.W.2d 307 (Minn. 2005), (a corporation may only appear in court by an attorney and the signature of a non-attorney on a pleading is a curable defect); *301 Clifton Place LLC v. 301 Clifton Place Condominium Ass'n* 783 N.W.2d 551, 561 (Minn. Ct. App. 2010), (rationale of *Save Our Creeks* "extends beyond business corporations and includes LLCs or Limited Liability Companies"); and *Hinckley Square*

*Associates v. Cervene*, 871 N.W.2d 426, 429 (Minn. Ct. App. 2015), (finds holding in *Save Our Creeks* and 301 Clifton Place LLC applies to limited partnerships).

Based on the initial and subsequent feedback received, 58% of responding stakeholders supported allowing agents in Housing Court in some form. The primary arguments for supporting this change are that a) allowing agents to appear at preliminary hearings will not increase costs for any parties; b) practices in both the Second and Fourth District will be consistent with the Housing Court Rules; and c) Rule 603 would follow applicable appellate decisions that have held that only licensed attorneys may represent corporations and other artificial entities in evidentiary hearings.

### **Summary:**

Hennepin County and Ramsey County Housing Courts propose that these recommendations be submitted to the Advisory Committee on the General Rules of Practice for their consideration.

Both counties are aware that the proposed change to Rule 603 is opposed by many stakeholders for reasons shared in the supplemental documents. However, the recommendations presented are guided and grounded by court decisions, stakeholder feedback, the desire to avoid passing additional costs in Housing Court to tenants and the goals of uniformity and consistency throughout the Branch as governed by the Housing Court Rules. We would recommend that the Committee on General Rules of Practice consider either allowing a hearing or a comment period before any changes to Rule 603 are recommended to the Supreme Court for adoption.

We welcome any questions or comments. Please let us know if you need any additional information or assistance. Thank you for your consideration of our recommendations.

### **Attachments and supporting Documents:**

Housing Court Rule clean up recommendations  
Housing Court Rule Survey results with comment summary  
Additional 4<sup>th</sup> District Stakeholder Feedback Summary  
Additional 4<sup>th</sup> District Stakeholder letters/emails

Cc: Judge Miller, Presiding Judge of the Civil Division  
Judge Vasaly and Referee Hutchison, Fourth District members of the Supreme Court Advisory Committee on the General Rules of Practice  
Sarah Lindahl-Pfieffer, Fourth District Court Administrator  
Heather Kendall, Second District Court Administrator

**Minnesota General Rules of Practice for the District Courts**  
With amendments effective July 1, 2015

**TITLE VII. HOUSING COURT RULES--HENNEPIN AND  
RAMSEY COUNTIES**

- Rule 601.      Applicability of Rules**
- Rule 602.      Housing Court Referee**
- Rule 603.      Parties**
- Rule 604.      Complaint**
- Rule 605.      Return of Summons**
- Rule 606.      Filing of Affidavits**
- Rule 607.      Calendar Call**
- Rule 608.      Withheld Rent**
- Rule 609.      Restitution**
- Rule 610.      Motions**
- Rule 611.      Review of Referee's Decision**
- Rule 612.      Discovery**

## **RULE 601. APPLICABILITY OF RULES**

In Hennepin and Ramsey Counties, Rules 601 through 612 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes.

### ***Task Force Comment--1991 Adoption***

*These rules apply only in Hennepin and Ramsey Counties. Housing Courts created by the legislature exist only in those counties.*

*These rules were drafted as a joint effort of legal advisory committees for the Ramsey and Hennepin County Housing Courts. Those committees met on a number of occasions, and these rules are the result of significant drafting efforts and compromise. Those drafting committees included the Housing Court Referee, court administrator, judges, and practitioners of landlord and tenant law in each County. The rules are generally drawn from a current local rule, 4th Dist. R. 13 and the Housing Court Temporary Rules, Rule 17.*

*The Task Force is mindful that Housing Court is currently in existence in only Ramsey and Hennepin Counties, 1989 Minnesota Laws, chapter 328, article 2, sections 17, 18 and 19 (uncodified), and these rules should be reviewed and revised if Housing Courts are used in other districts.*

## **RULE 602. HOUSING COURT REFEREE**

The housing court referee may preside over all actions brought under Minnesota Statutes, Chapter 504B, criminal and civil proceedings related to violations of any health, safety, housing, building, fire prevention or housing maintenance code, escrow of rent proceedings, landlord and tenant damage actions, and actions for rent and rent abatement, ~~unless the matter has been removed for hearing before a judge.~~

A party may request that a judge hear a case by filing such request in writing with the court administrator at least 1 day prior to the scheduled hearing date.

(Amended effective January 1, 2000.)

### ***Advisory Committee Comment--1999 Amendments***

*The former chapters 504 and 566 were consolidated into and replaced by a new chapter 504B. This change is not intended to have any substantive effect other than to correct the statutory reference. (Added effective January 1, 2000.)*

***Task Force Comment--1991 Adoption***

*The procedure for removal of a referee assigned in Housing Court is intended to be different, due to the exigencies of practice in that court, from the procedure created by Minn. Gen. R. Prac. 107.*

**RULE 603. PARTIES**

An Eviction Action ~~unlawful detainer action~~ shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing. No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

***Task Force Comment--1991 Adoption***

*The Task Force expresses no opinion about whether or the extent to which the role of lay advocates constitutes the unauthorized practice of law. See Minnesota Statutes, section 481.01, et seq. (1990).*

**RULE 604. COMPLAINT**

**(a) Contents of Complaint.** The plaintiff in an ~~unlawful detainer~~Eviction Action case shall file with the court administrator a complaint containing the following:

- (1) A description of the premises including a street address;
- (2) The legal owner of the property or other person entitled to possession of the premises;
- (3) A statement of how plaintiff has complied with Minnesota Statutes, section 504B.181, by written notice to the defendant, by posting or by actual knowledge of the defendant;
- (4) The facts which authorize recovery; and,
- (5) A request for return of possession of the property.

**(b) Signature.** The complaint shall be signed by the plaintiff or the plaintiff's authorized agent or a duly licensed lawyer.

**(c) Termination.** If the complaint contains allegations of holding over after termination of the lease, a copy of the termination notice, if any, must be attached to the complaint or provided to defendant or defendant's counsel at the initial appearance,

unless the plaintiff does not possess a copy of the notice or if the defendant at the hearing acknowledges receipt of the notice.

**(d) Breach.** If the complaint contains allegations of breach of the lease or rental agreement, a copy of the lease or rental agreement, if any, must be attached to the complaint or provided to defendant and defendant's counsel at the initial appearance, unless the plaintiff does not possess a copy.

(Amended effective January 1, 2000.)

***Advisory Committee Comment--1999 Amendments***

*The former statute section 504.22 was replaced by a new statute section 504B.181. This change is not intended to have any substantive effect other than to correct the statutory reference. (Added effective January 1, 2000.)*

**RULE 605. RETURN OF SUMMONS**

All summons shall be served in the manner required by Minnesota Statutes, Chapter 504B, and the affidavit of service shall be filed with the court by 3:00 o'clock p.m. 3 business days prior to the hearing or the matter may be ~~stricken~~dismissed. The affidavit must contain the printed or typed name of the person who served the summons.

(Amended effective January 1, 2000.)

***Advisory Committee Comment--1999 Amendments***

*The former chapter 560 was replaced by a new chapter 504B. This change is not intended to have any substantive effect other than to correct the statutory reference.*

**RULE 606. FILING OF AFFIDAVITS**

Upon return of the sheriff or other process server indicating that the defendant cannot be found in the county and, in the case of a nonresidential premises, where no person actually occupies the premises described in the complaint, or, in the case the premises described in the complaint is residential, service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 and 10:00 p.m., the plaintiff or plaintiff's lawyer shall:

- (1) file an affidavit stating that the defendant cannot be found or on belief that the defendant is not in the state, and
- (2) file an affidavit stating that a copy of the summons and complaint has been mailed to the defendant at the defendant's last known address or that such an address is unknown to the plaintiff.



Service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one week. A separate affidavit shall be filed stating that the summons has been posted and the date and location of the posting.

(Amended effective January 1, 1998.)

***Advisory Committee Comment--1999 Amendments***

*This rule is amended to conform the service requirements to the service provisions of Minnesota Statutes, section 504B.331 (Supp. 1999). The procedure of the revised rule also streamlines the procedure for issuance, service, and filing of process, and should permit service to be accomplished at a lower cost. (Amended effective January 1, 2000.)*

**RULE 607. CALENDAR CALL**

At the first call of the calendar the parties shall specify whether the case is a default or for trial, and if for trial, whether by court or jury. ~~Proposed Order forms will be available at the hearing. It is the responsibility of the plaintiff to properly complete the proposed order prior to the case being called for hearing.~~ When each case is called for hearing, the defendant shall be asked whether the defendant admits or denies the charges in the complaint. ~~Matters involving unlawful ouster or lockouts, utility shutoffs and other emergency relief, and motions for temporary restraining orders shall be heard first, then default cases shall be heard in their calendar order, followed by contested cases triable to the court without a jury.~~ If a jury trial is demanded, the jury fee must be paid before the jury is impaneled. ~~Contested cases shall be set for trial the same day as the initial hearing, if possible, or set on the first available calendar date.~~

**RULE 608. WITHHELD RENT**

In any ~~unlawful detainer~~Eviction Action case where a tenant withholds rent in reliance on a defense, the defendant shall deposit forthwith into court an amount in cash, money order or certified check payable to the District Court equal to the rent due as the same accrues or such other amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case.

**RULE 609. ~~RESTITUTION~~RECOVERY  
OF PREMISES**

A ~~writ of restitution~~Writ of Recovery and Order to Vacate shall issue within 24 hours after the entry of judgment, excluding Saturdays, Sundays and legal holidays, unless a stay authorized by law is specifically ordered by the court.



## **RULE 610. MOTIONS**

Any motion otherwise allowed by the Minnesota Rules of Civil Procedure may be made by any party orally or in writing at any time including the day of trial. Whenever possible, oral or written notice of any dispositive motions and the grounds therefore shall be provided by the moving party to all parties prior to the hearing.

All motions shall be heard by the court as soon as practicable. The court may grant a request by any party for time to prepare a response to any motion for good cause shown by the requesting party or by agreement of the parties.

The requirements of service of notice of motions and any time periods set forth in the Minnesota Rules of Civil Procedure do not apply.

## **RULE 611. REVIEW OF REFEREE'S DECISION**

**(a) Notice.** In all cases except conciliation court actions, a party not in default may seek review by a judge of a decision or sentence recommended by the referee by serving and filing a notice of review on the form prescribed by the court administrator. The notice must be served and filed within ten days after an oral announcement in court by the referee of the recommended order or, if there is no announcement of the order in court, within 13 days after service by electronic means or mail of the adopted written order. Service by mail of the written order shall be deemed complete and effective upon the mailing of a copy of the order to the last known address of the petitioner. Service of the notice of review shall be in accordance with Rule 14 of these rules.

A judge's review of a decision recommended by the referee shall be based upon the record established before the referee. Upon the request of any party, a hearing shall be scheduled before the reviewing judge.

**(b) Stays.** In civil cases, filing and service of a notice of review does not stay entry of judgment nor vacate a judgment if already entered unless the petitioner requests and the referee orders a bond, payment(s) in lieu of a bond, or waiver of bond and payment(s). The decision to set or waive a bond or payment(s) in lieu of bond shall be based upon Minn. R. Civ. App. P. ~~108, subdivisions 1 & 5~~108.02. A hearing on a bond or payment(s) in lieu of bond shall be scheduled before the referee, and the referee's order shall remain in effect unless a judge modifies or vacates the order.

In criminal cases, the execution of judgment or sentence shall be stayed pending review by the judge.

**(c) Transcripts.** The petitioner must obtain a transcript from the referee's court reporter. The petitioner must make satisfactory arrangements for payment with the court reporter or arrange for payment in forma pauperis.

Any transcript request by the petitioner must be made within one day of the date the notice of review is filed. The transcript must be provided within five business days after its purchase by the petitioner.

For good cause the reviewing judge may extend any of the time periods described in this Rule 611(c).

(Amended effective July 1, 2015.)

## **RULE 612. DISCOVERY**

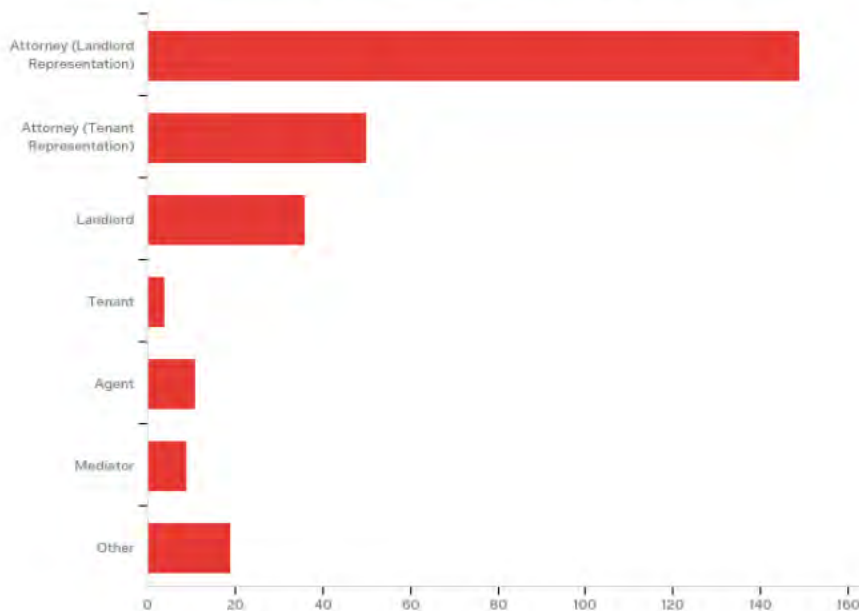
Because of the summary nature of proceedings in Housing Court, the parties shall cooperate with reasonable informal discovery requests by another party.

Upon the request of any party to a matter scheduled for trial, the presiding referee or judge may issue an order for an expedited discovery schedule.

# Housing Court Rule Change Survey of Stakeholders in the 2nd and 4th Judicial Districts

September 12th 2017

## 1. Please identify your role in Housing Court:



Answer	%	Count
Attorney (Landlord Representation)	53.60%	149
Attorney (Tenant Representation)	17.99%	50
Landlord	12.95%	36
Tenant	1.44%	4
Agent	3.96%	11
Mediator	3.24%	9
Other*	6.83%	19
Total	100%	278

\*Other:

Landlord advocacy organization

Attorney (Landlord and Tenant Representation)

VLN Volunteer

Former Housing court referee

City staff

Attorney (Mortgage company/creditor)

Attorney - Bank and Landlord Representation

Private Attorney representing all areas and clients

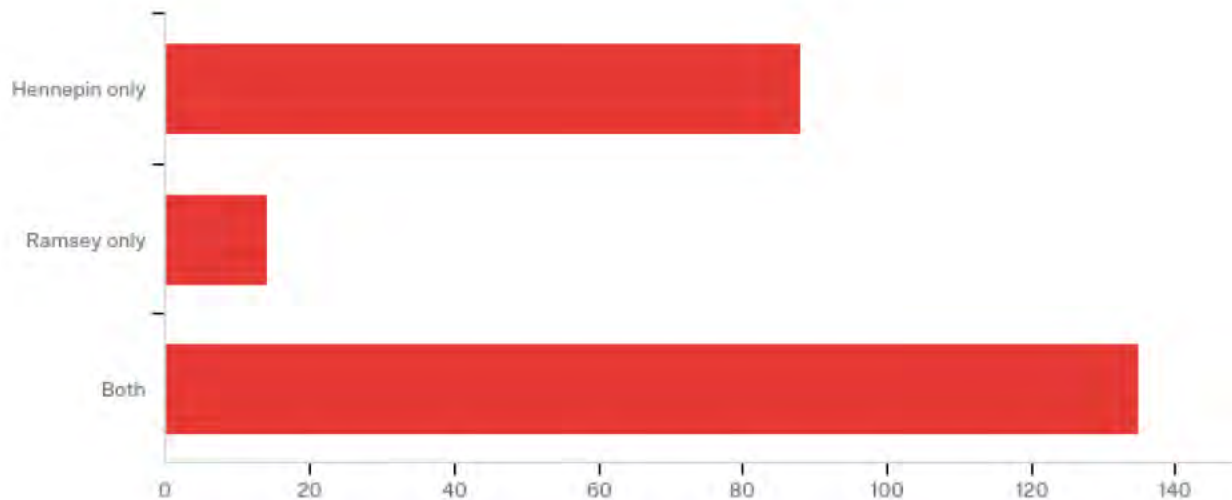
Attorney (City Representation)

Housing Court committee

Attorney/Government Entity

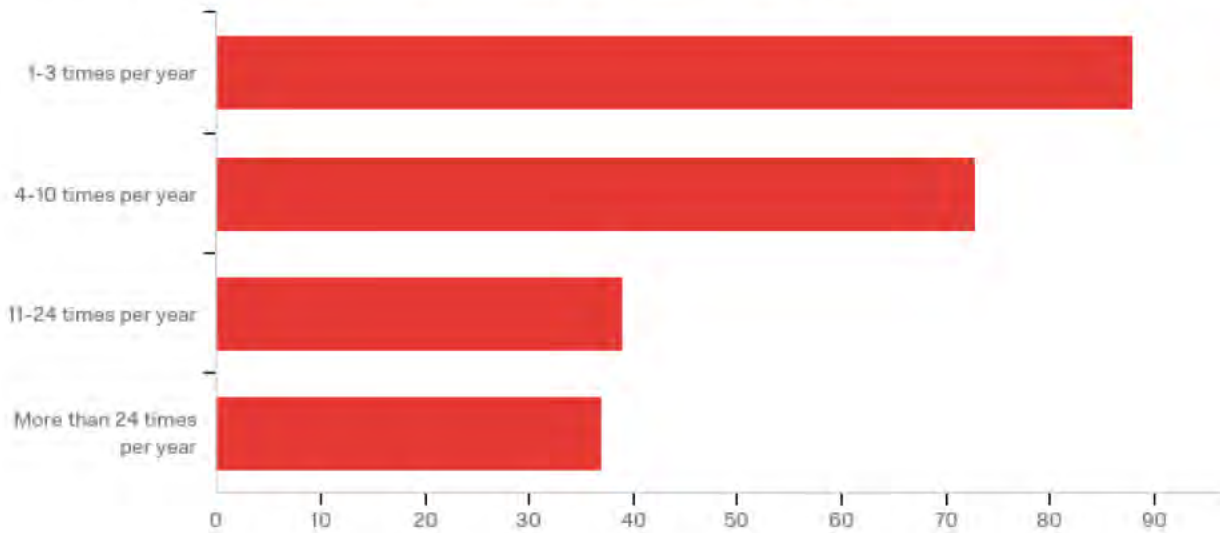
Attorney-City Representation

**2. Do you appear in Housing Court in Hennepin County, Ramsey County, or both? (Please only complete this survey once, even if you appear in both courts.)**



Answer	%	Count
Hennepin only	37.13%	88
Ramsey only	5.91%	14
Both	56.96%	135
Total	100%	237

### 3. How often do you appear in Housing Court each year?



Answer	%	Count
1-3 times per year	37.13%	88
4-10 times per year	30.80%	73
11-24 times per year	16.46%	39
More than 24 times per year	15.61%	37
Total	100%	237



#### 4. Which option do you support for Rule 601?

##### Current Rule (Option 1, no change)

##### Rule 601. Applicability of Rules

In Hennepin and Ramsey Counties, Rules 601 through 612 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes.

##### Proposed Revised Rule 601 (Option 2)

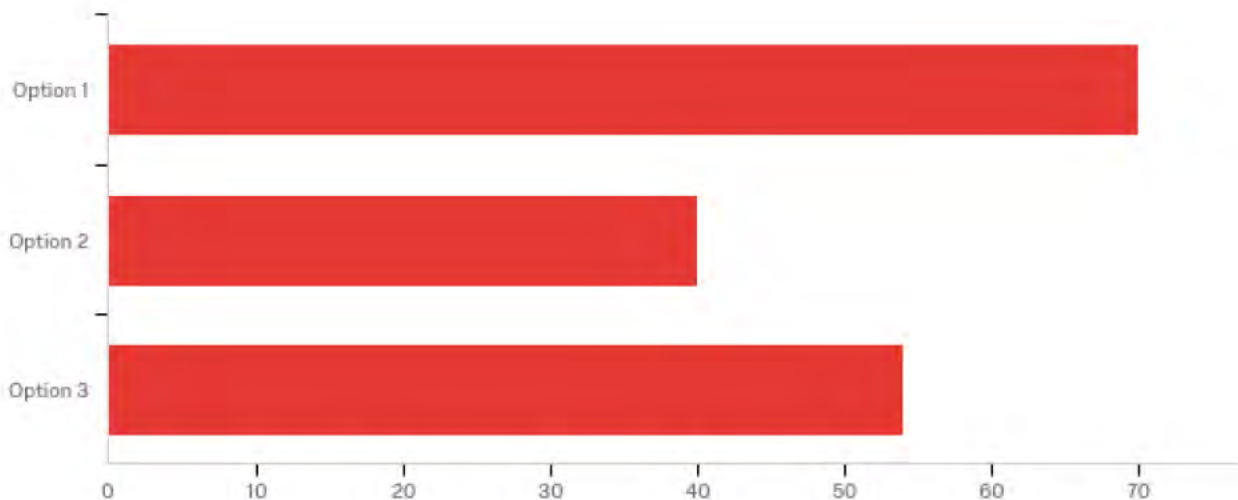
##### Rule 601. Applicability of Rules

In Hennepin and Ramsey Counties, Rules 601 through 612 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes, or Minnesota Appellate Court decisions.

##### Proposed Revised Rule 601 (Option 3)

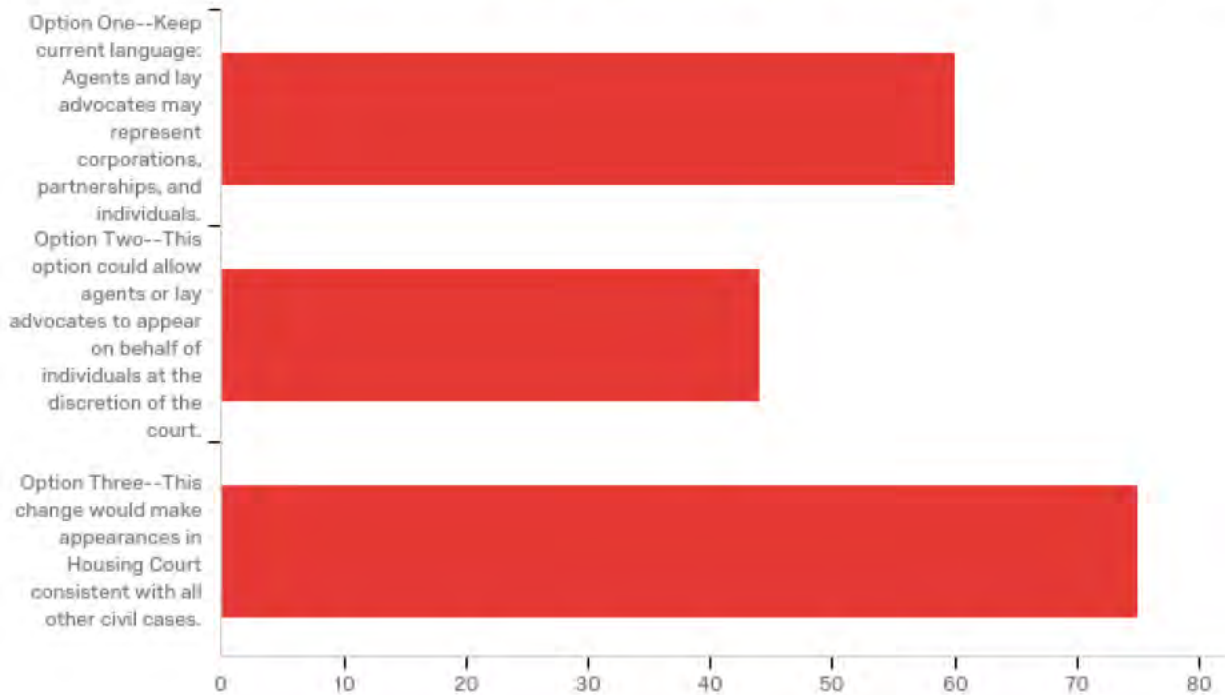
##### Rule 601. Applicability of Rules

In Hennepin and Ramsey Counties, Rules 601 through 612 apply to all proceedings in Housing Court. These rules and, where not inconsistent, the Minnesota Rules of Civil Procedure, shall apply to housing court practice except where they are in conflict with applicable statutes, or published (or “precedential”) Minnesota Appellate Court decisions.



Answer	%	Count
Option 1	42.68%	70
Option 2	24.39%	40
Option 3	32.93%	54
Total	100%	164

## 5. Which of the below options best represents your viewpoint for Rule 603?

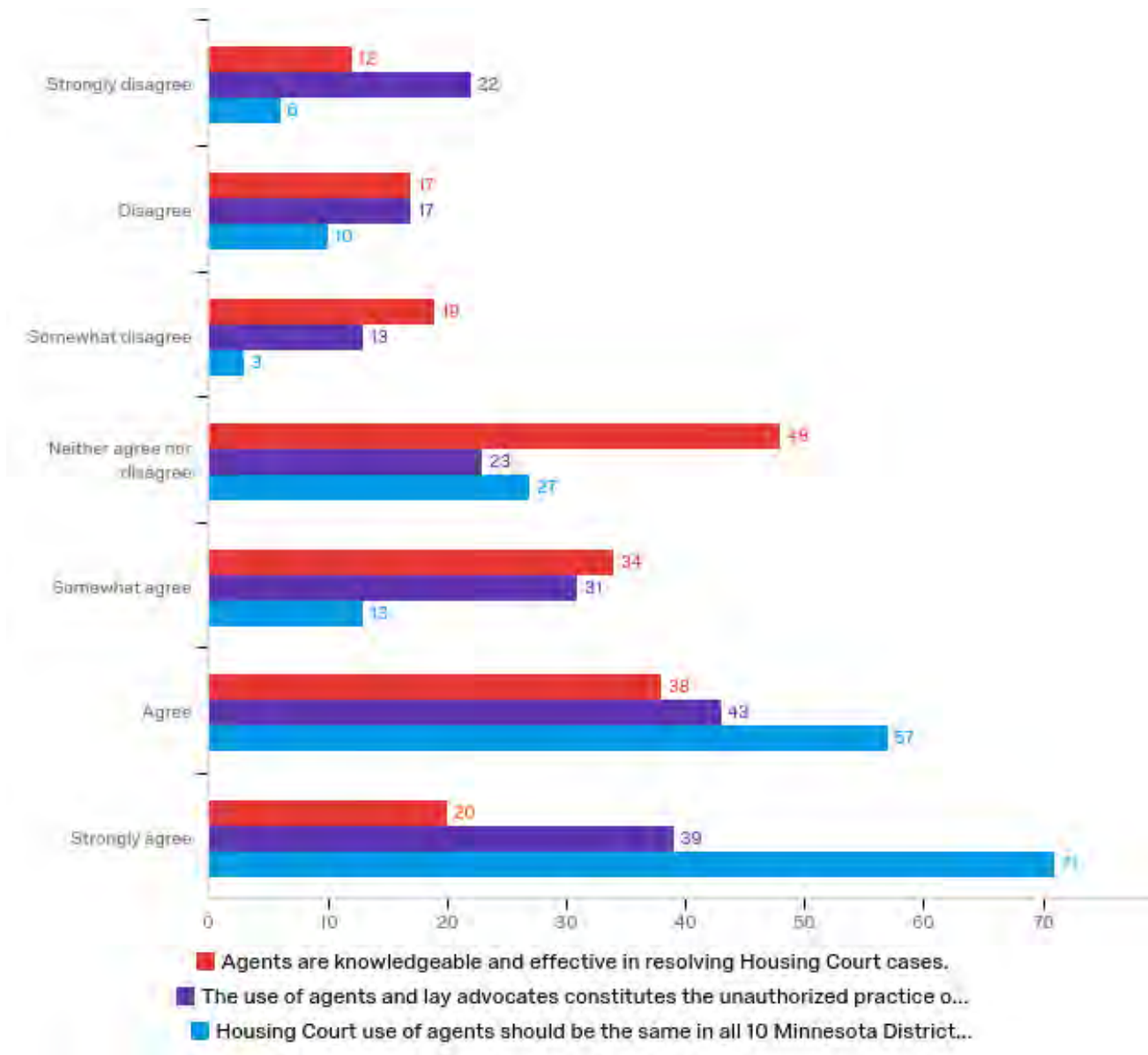


Answer	%	Count
Option One--Keep current language: Agents and lay advocates may represent corporations, partnerships, and individuals.	33.52%	60
Option Two--This option could allow agents or lay advocates to appear on behalf of individuals at the discretion of the court.	24.58%	44
Option Three--This change would make appearances in Housing Court consistent with all other civil cases.	41.90%	75
Total	100%	179



6/ Please indicate your level of agreement with the following statements:

Question	Strongly disagree		Disagree		Somewhat disagree		Neither agree nor disagree		Somewhat agree		Agree		Strongly agree		Mean	Count
Agents are knowledgeable and effective in resolving Housing Court cases.	6.38%	12	9.04%	17	10.11%	19	25.53%	48	18.09%	34	20.21%	38	10.64%	20	4.43	188
The use of agents and lay advocates constitutes the unauthorized practice of law.	11.70%	22	9.04%	17	6.91%	13	12.23%	23	16.49%	31	22.87%	43	20.74%	39	4.64	188
Housing Court use of agents should be the same in all 10 Minnesota District Courts.	3.21%	6	5.35%	10	1.60%	3	14.44%	27	6.95%	13	30.48%	57	37.97%	71	5.60	187



## **Summary - Housing Court Rules Survey Comments**

### **Rule 601:**

The greatest frequency of comments surrounding Housing Court Rule 601 reflect the opinions that adding extra language to Rule 601 would add confusion and/or would be superfluous. Additionally, a significant number of comments reflected the assertion that if court decisions or statutes conflict with the Housing Court Rules, then the Supreme Court can change the rule(s), if necessary. There were a total of 30 comments pertaining to Rule 601.

Representative comments: *“Interpretation of any rule or statute has to be subject to the interpretation of courts--adding it seems superfluous and potentially confusing”*

*“These rules should be treated like all other court rules; the Supreme Court can change the rule if it wants to but should apply it (and the district court should apply it) until changed”*

#### Regarding the use of Agents in Rule 603:

The greatest number of comments with respect to the use of agents reflect opinions that the agent option should be provided in order to keep expenses for all parties down and that agents are capable and effective. Notable, but significantly lower in number, were comments which reflected that agents should not be allowed to appear in court and practice law and that no special rules for non-lawyers/advocates should be in place. There were a total of 43 comments pertaining to the use of agents.

Representative comments: *“Agents are able to negotiate settlements with tenants just as well as attorneys. Agents are not providing legal advice to the owners, if legal advice is needed they are directed to speak to an attorney. If owners are satisfied with sending agents to court that option shouldn't be taken away from them, attorneys are an extra expense that cannot be collected in court and forcing owners to use attorneys will result in higher rent for tenants”*

*“The Housing Courts were created to provide an expedited procedure in the counties in which a large portion of housing-related actions (primarily eviction actions) take place. The power of authority system, allowing non-attorney managing agents to represent a business entity, furthers that goal. There appears to be no need for a change - no showing that judicial efficiency would be better served or that either party is being harmed. In fact, it has worked exceedingly well in Hennepin County and should be re-implemented in Ramsey County. The Walnut Towers v. Schwan court acknowledged that the Housing Courts have the authority within their rules to permit non-attorney representation. Finally, the cost for a change requiring attorney representation in all eviction actions would largely be borne by tenants in increased rents and being held responsible for attorney's fees. That would have a direct impact on housing affordability which is already a serious issue in Minnesota”*

*“Agents should not be allowed to appear in court and practice law. Hennepin and Ramsey should not provide special rules for non-lawyers/advocates”*

*“On several occasions, I have stepped into a case following independent/professional agent representation. The landlord client was left in an undesirable position with no actual legal advice. On some occasions, the landlord client was under the misimpression that the agent was, in fact, an attorney.”*

*“As an agent and going to court, it's difficult and frustrating as we are not “trained” as a lawyer to navigate the legal system. Evictions should be handled as they are in Dakota County with only lawyers. Lastly, it's the safety of the agent—we are the ones onsite who the defendant identifies with that evicted them and they could easily retaliate against the agent.”*

## Stakeholder Feedback

### Court Survey

41.90% of the responses supported the elimination of Rule 603.

33.52% supported keeping the rule intact with no changes.

24.58% supporting allowing agents or lay advocates to appear at the discretion of the court.

In summary, 58.10% support keeping agents in some form.

### Individual Stakeholder Feedback

A summary of emails and letters received from stakeholders listed below. In summary, ten people submitted written comments, 3 were in favor of new proposed Rule 603 and 7 were opposed. If you break down the comments by the category the stakeholders represent, the results are basically even.

Category	
Tenant Advocates (5)	Oppose
Mediator (1)	Oppose (at first approved)
Landlord Attorney (1)	Oppose
Landlord Organization (1)	Support
Self Help (1)	Support (at first opposed)
Public Housing Representative (1)	Support



Name	Summary of feedback
<p>1. <b>Lisa R. Griebel</b>, General Counsel Minneapolis Public Housing Authority</p> <p>Wrote three letters: 4/5/2018; 3/5/2018 and 11/13/2017.</p>	<p>Supports proposal to allow agents at first appearance hearings but require attorneys at trials.</p> <p>Housing Court should promote expediency and efficiency. Unlikely agents causing harm to litigants on either side.</p> <p>Minneapolis Public Housing Authority has nearly 6,000 public housing residents. Eviction files reach as many as 30-40 per month. Housing programs not fully funded and appropriations are decreasing annually. Requiring attorneys at first appearance hearing would increase legal expenses and take money away from where it is needed to provide housing to those in need.</p> <p>Strongly opposed eliminating agents at first appearance hearings.</p>
<p>2. <b>Drew Schaffer</b>, Legal Aid Email: 3/19/2018</p>	<p>It is well accepted rule that corporations may only appear in court by and through an attorney. Proposed Rule 603 change would result in bad policy. The corporate counsel rule protects the civil justice system. Corners should not be cut because fundamental, constitutionally protected interests are at stake. The proposed change to Rule 603 hurts, rather than helps, the cause of equal justice for all.</p>
<p>3. <b>Lawrence McDonough</b>, Dorsey &amp; Whitney, LLP Email: 3/19/2018</p>	<p>Asserts that Rule 603 was never intended to change the law. Nicollet Restoration case should be controlling. Likes Option 2 provided in Survey which would require corporations, limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships to always be represented by attorneys.</p>
<p>4. <b>Luke Grundman</b>, Legal Aid Email: 3/19/2018</p>	<p>Believes the proposed rule will undercut goals of the court system and judicial efficiency. First, asserts it is more difficult to settle with agents. Second allowing agents leads to more filings because it is less expensive for Landlords to file. Forcing a Landlord to hire an attorney will motivate them to try harder to settle before filing. Third, believes court has less control over conduct of agents.</p>
<p>5. <b>Todd Liljenquist</b>, Minnesota Multi Housing Association Email: 3/16/2018 and 4/5/2018</p>	<p>Greatly appreciates the compromise language. Removing agent representation at first appearance hearings would have been burdensome, costly, and unnecessary.</p>

	<p>Eviction proceedings are primarily summary proceedings, similar to conciliation court actions. Agent participation in conciliation court allowed.</p> <p>Agent and “Power of Authority” system has worked well over the years.</p> <p>Argument that requiring attorneys to make it more expensive for Landlords is a troubling argument. Unlikely to reduce evictions and will increase costs, which will ultimately be paid by Tenants. Should look at other, more constructive ways to reduce evictions.</p> <p>Should make it clear that licensed attorneys are NOT required to obtain and file a POA.</p>
6. <b>Elizabeth Sauer</b> , Legal Aid Email 3/15/2018	<p>Preferable to keep Rule 603 as it currently reads than make proposed changes.</p> <p>Believes new proposed rule allows non-attorneys to practice law and that it is in conflict with Nicollet Restoration.</p> <p>Asserts that agents often have little authority to settle case and have limited understanding of applicable law. Believes that it is more difficult to settle with agents than with attorneys.</p>
7. <b>Melissa C. Kantola</b> , Manager, Self-Represented Litigant (SRL) Program Email: 3/5/2018	<p>Supports proposed rule change that would allow agents at first appearance hearings but would require attorneys at evidentiary hearings for corporations, etc.</p>
8. <b>M.J. Bauer</b> - Director, CRC Email 3/5/2018 and 4/5/2018	<p>In first email on 3/5/2018 supported the proposed rule change that would have allowed agents to appear at first appearance hearing.</p> <p>In second email, opposed idea of allowing agents and argued that agents less likely to mediate than attorneys.</p>
9. <b>Paul Birnberg</b> , Homeline Email on or about 4/1/2018	<p>Opposes allowing agents. Believes that proposed change will slow down court proceedings, lead to more dismissed cases and that allowing agents does not make the process easier.</p> <p>The proposal denigrates the court and suggests Housing Court is some sort of second-class operation.</p>

	<p>Viewpoint that this special-interest rule making, with artificial entities benefiting who already get a financial break by forming LLC, Corporations, etc.</p> <p>Observation is that half think proposed rule good idea and half think bad idea. Argues that Bench and Bar should try to reach consensus.</p>
10. <b>Matt Engel, Esq.</b> letter dated 4/5/2018	<p>Strongly opposes allowing agents to appear under a power of authority.</p> <p>Believes it is the unauthorized practice of law.</p> <p>Doesn't believe that allowing agents to appear at first appearance hearings is a cost savings to landlords or other parties. He asserts that many attorneys charge less than non-attorney agents who charge Landlords fees to appear in Housing court.</p> <p>Asserts that most landlords do not have low-income and can afford to hire attorneys.</p> <p>Questions Minneapolis Public Housing Authority's argument that they cannot afford attorneys at first appearance hearings based on their draft budget. Does not believe Hennepin and Ramsey Counties should provide special rules for non-lawyers that are contrary to the rest of the counties in Minnesota.</p>



1. Lisa R. Griebal, Minneapolis Public Housing Authority, three letters.



April 5, 2018

The Honorable Mark Labine  
The Honorable Melissa Houghtaling  
Hennepin County Housing Court  
Hennepin County Government Center  
300 South 6<sup>th</sup> Street, Rm. #C-300  
Minneapolis, MN 55487

RE: Proposed Changes to Rule 603

Dear Referee Labine and Referee Houghtaling,

Minneapolis Public Housing Authority submits this correspondence in response to the March 22, 2018 Landlord/Tenant Bench and Bar Committee meeting, at which time proposed changes to Rule 603 were again discussed. Prior to the meeting, the Court sent a proposal related to Rule 603 that would allow MPHA and related entities to have non-licensed agents appear at first appearance hearings and negotiate settlement agreements on behalf of its principal. MPHA submitted a letter on March 5, 2018 stating that it supports the proposal. (A copy of the earlier correspondence is attached for your convenience.)

At the meeting on March 22, 2018, however, additional comments in support of a change in practice were made, and MPHA writes to address these comments.

1. Although certainly not the case for MPHA, the argument was made that hiring an attorney might actually be less expensive than using an agent. However, if a landlord wants to retain an attorney, he or she is free to do so. The rule does not prohibit the use of attorneys – it provides for the use of agents under certain circumstances.
2. Another argument was made that requiring attorneys to appear in court might lower eviction filings. There is simply no available evidence that supports this position. On the contrary, there is evidence that MPHA, one of the largest landlords in this state, has a 5.5% eviction filing rate, which is one of the lowest percentages of eviction filings in the county. And as you know, MPHA uses agents. (See Minneapolis Innovation Team 2016 study on Evictions in Hennepin County).

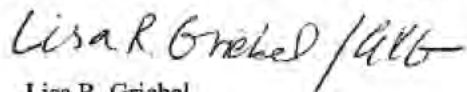
The current rule, as with other rules specific to housing court, is both efficient, expedient and cost efficient. In addition, to the writer's knowledge, not a single opposing counsel or tenant advocate has asserted that MPHA's tenants are being harmed by its current practice. Given this and the reasons set forth in previous correspondence relating to this issue, MPHA respectfully requests that it be authorized (by no change in the rule, by amendment that would still allow for agents at non-evidentiary hearings, or

by standing order or some other exemption) to continue to have agents appear on its behalf in housing court.

Thank you for your consideration in this matter.

Sincerely,

MINNEAPOLIS PUBLIC HOUSING AUTHORITY

A handwritten signature in black ink, appearing to read "Lisa R. Griebel / alt".

Lisa R. Griebel  
General Counsel  
612-342-1395





March 5, 2018

The Honorable JaPaul Harris  
The Honorable Mark Labine  
Hennepin County Housing Court  
Hennepin County Govt. Center  
300 South 6th Street, Rm. #C-300  
Minneapolis, MN 55487

RE: Proposed Changes to Rule 603

Dear Hon. Harris and Hon. Labine:

This correspondence is in response to the recent meeting notice for March 22<sup>nd</sup>, at which time proposed changes to Rule 603 will once again be discussed. Unfortunately, I cannot attend as I will be in Washington, D.C. at a housing conference addressing, among other things, reductions in federal funding.

I am enclosing correspondence previously sent when changes were first suggested to Rule 603. As you know, changes as originally proposed would be unworkable for MPHA. It is our understanding that what is currently being advanced would allow MPHA to use non-licensed attorneys at first appearance non-payment of rent cases as well as negotiate settlements at these initial court appearances, as is our current practice. If that is the case, MPHA has no objection to what is currently being proposed.

Thank you for your consideration.

Sincerely,

MINNEAPOLIS PUBLIC HOUSING AUTHORITY

A handwritten signature in black ink, appearing to read "Lisa R. Griebel".

Lisa R. Griebel  
General Counsel  
612-342-1395  
A black rectangular redaction box covering the bottom portion of the contact information.



November 13, 2017

The Honorable JaPaul Harris  
The Honorable Mark Labine  
Hennepin County Housing Court  
Hennepin County Government Center  
300 South 6th Street, Rm. #C-300  
Minneapolis, MN 55487

RE: Objection to proposed changes to Rule 603

Dear Hon. Harris and Hon. Labine:

It is my understanding that you and others are considering recommending changes to Minn. R. Gen. P. 603 as it pertains to non-attorney representation in housing court. MPHA objects to changes to the current rule in this regard; and in the alternative, requests that MPHA be exempted from attorney appearance requirements due to its unique status as a large independent public housing authority.

Minn. R. Gen. P. 603 currently provides that non-attorney agents with Power of Authority may appear at eviction hearings in Hennepin and Ramsey County housing courts. While various appellate level decisions have affirmed the common law requirement that corporations must appear with an attorney in district court proceedings, there has been no challenge or authority to support the argument that Rule 603, specific to Ramsey and Hennepin County housing courts and as adopted by the Minnesota Supreme Court, is in any way in contravention with state common law or the state Constitution. (*See Walnut Towers v. Schwan*, No. A07-1311, 2008 WL 4224462 (Minn. Ct. App. Sep. 16, 2008)).

In addition, there are good reasons to distinguish housing court from general district court proceedings. Given the volume of cases and the specific nature of cases, housing court lends itself to rules of procedure that promote expediency and efficiency. Minn. R. Gen. P. 603, in permitting non-attorney agents to appear at eviction proceedings on behalf of an incorporated landlords, serves the same purpose. It is more expedient and less costly to allow agents with Power of Authority to appear on behalf of the corporate landlord, and it is unlikely that litigants on either side of a housing court matter are being harmed by agent representation on the landlord side. (I cannot speak for any inconvenience caused to the Court by allowing non-attorney agents to appear.) As the rule promotes expediency and efficiency, presumably causes no harm and is sanctioned by the Minnesota Supreme Court, MPHA requests that changes not be made to the rule.

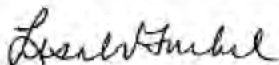
In the alternative, MPHA requests an exemption from the application of a rule requiring attorney representation, if indeed the rule is changed. As mentioned above, MPHA is unique to Minnesota in its size and governance. It is the largest public housing authority in this state with nearly 6,000 public housing residents. As you know, MPHA commonly has over 20 eviction hearings for the non-payment of rent each month and filings sometimes reach as many as 30-40 cases per month. As a courtesy and by request of the Court, MPHA provides one agent for each 10 cases set for a first appearance. It is not uncommon for MPHA to have 4 representatives in court on any given calendar, including our 2 rent collection agents, one paralegal and one staff attorney. Under the proposed change, MPHA would have to have four lawyers in court. We don't even have four lawyers on staff, much less available on any given day. Currently, we have a general counsel and one staff attorney - our newly hired Assistant General Counsel is on maternity leave. MPHA is also self-insured, which means its legal staff handles all litigation matters in-house. Unlike St. Paul Public Housing Authority, MPHA is not staffed by city attorneys. When we need additional counsel, we must hire outside firms. Given our legal staff's obligations outside of eviction court, it is likely that we would have to hire 2-3 outside counsel each month just to properly staff housing court appearances. The additional dollars spent in legal fees (i.e., taxpayer dollars) would be better spent promoting and delivering quality housing to the extremely low-income households we serve.

As you know, MPHA is almost exclusively funded through federal appropriations. As you may be aware, Congress does not fully fund our housing programs, operations, or capital needs. In addition, appropriations awarded to public housing programs are decreasing annually. Last year, for example, MPHA only received \$10 million from HUD to address our \$140 million of backlogged capital needs. In short, we are requesting that this Court not increase our legal expenses and add to our misery.

Please feel free to contact me directly to discuss. I apologize for not being able to attend the November 15, 2017 meeting, as it conflicts with our Agency's board meeting.

Sincerely,

MINNEAPOLIS PUBLIC HOUSING AUTHORITY



Lisa R. Griebel  
General Counsel  
612-342-1395





## 2. Drew Schaffer, legal Aid email 3/19/2018.

Dear Referee Labine, Referee Houghtaling, and Ms. Lamb:

I am writing to supplement the comments of my colleague Luke Grundman, the leader of the Minneapolis housing practice at Mid-Minnesota Legal Aid (“Legal Aid”), on the proposed change to Minnesota General Rule of Practice 603 (“Rule 603”). Legal Aid helps vulnerable people in our community meet their civil legal needs to protect their safety and stability. We strive to deliver on the promise of equal justice for all in the civil justice system. Improving ordinary Minnesotans’ access to justice is on my mind on a daily basis. I know it is on all of your minds as well.

Because of Legal Aid’s concern for Minnesota’s civil justice system, we oppose the proposed change to Rule 603. The proposal vitiates the corporate counsel rule, which has been part of Minnesota law for over a century. **This well-accepted common law rule provides that corporations may only appear in court by and through an attorney.** The Minnesota Supreme Court’s Advisory Committee on the General Rules of Practice roundly rejected a similar proposal to change Minnesota law over eight years ago. The Committee cited *Nicollet Restoration, Inc. v. Turnham*, as the basis for its rejection of the proposal. See Recommendations of Supreme Court Advisory Committee on the General Rules of Practice, August 31, 2009 (attached), at Page 5. In the eight-plus years since the last effort to change Rule 603, Minnesota’s appellate courts have extended the corporate counsel rule to limited liability companies, limited partnerships, and other business entities. In fact, since the early 1900s, Minnesota appellate courts have been wholly unified in affirming and extending the corporate counsel rule in cases involving business entities in which members, partners, and interested stakeholders have but one master to the exclusion of all others: the business entity in which they have a stake.

**Changing Rule 603 as proposed would result in bad policy.** First, there would be a special exception to the corporate counsel rule for parts of two district courts in Minnesota. Creating special exceptions to a longstanding, statewide common law rule in certain courts of practice is unwise and ill-advised.

Second, allowing non-attorney agents to appear in court is a practice historically disfavored by the Minnesota Supreme Court for sound policy reasons. Non-attorney agents, unencumbered by the ethical rules of the legal profession – as well as the legal profession’s higher level of diligence in investigating material facts to support verified allegations in court pleadings – would be unfettered in their ability to use the court system for purposes in service to their corporate masters, without regard to the concept of justice or the legal profession’s standards for scrupulous review of pleaded claims. **The corporate counsel rule protects the civil justice system.** It is important to the courts, the legal profession, and the public. For these reasons, over

the last century-plus, our courts have universally rejected arguments and efforts to limit the corporate counsel rule. The proposed change to Rule 603 would do exactly that.

Lastly, and perhaps most importantly, Housing Court in the District Court of Hennepin County is a venue for significantly critical litigation and dispute resolution in Minnesota's civil justice system. It is a unique court, both in terms of its historically high volume and its fast pace of litigation. Much is at stake, including people's property rights, their possessory interests, and the health and safety of their homes. **This is not a venue – or an area of the law – where any corners should be cut. Fundamental, constitutionally protected interests are at stake.** And they are at stake in remarkable numbers day to day, and week to week.

If sophisticated, professional owners of real property elect to form liability-limiting business entities as part of their business strategies, then they must accept the responsibility of securing and retaining attorneys for professional representation in court. Most professional companies already do this. The system should not subsidize the less scrupulous others, who seek to avoid their legal responsibilities in the eviction process or, more broadly, in maintaining health and safety in the properties they operate. Again, the court system exists to do equal justice for all, not to create fast lanes for some.

In summary, the corporate counsel rule has served Minnesota well for over a century. There is no good policy rationale for changing the law to create a special exception to the rule now. Beyond that, the **proposed change to Rule 603 hurts – rather than helps – the cause of equal justice for all.**

Thank you for your consideration of my comments, as well as all of the work all of you do day to day to make the civil justice system work for our community.

Drew P. Schaffer  
Executive Director  
Mid-Minnesota Legal Aid  
430 First Avenue North, Suite 300  
Minneapolis, MN 55401  
612.746.3702

  
[www.mylegalaid.org](http://www.mylegalaid.org)



### 3. Lawrence McDonough email 3/19/2018

Referee Labine, Referee Houghtaling, and Ms. Lamb,

Thank you for the opportunity to comment on Minn. Gen. R. Prac. 603. I believe that I am the only current member of this committee who has been a member from the beginning. I proposed, co-drafted, and lobbied for the law that created the housing court as part of the Legal Services Task Force of the 1989 Governor's Commission on Affordable Housing.

#### **Corporations and other Regulated Entities**

I was a member of this committee as well as the joint committee of both Fourth and Second Districts when we discussed and drafted the housing court rules. *There was no proposal for or discussion of changing the law requiring regulated entities such as corporations and limited liability entities to be represented by attorneys.*

Unfortunately, inconsistent district court decisions in Hennepin County and inaccurate dicta in Court of Appeals decisions have created the perception in some that **Rule 603 was intended to change the law**. It was not.

In 2009, the Supreme Court Advisory Committee on the Rules of General Practice rejected a proposal to allow corporations to appear in district court eviction actions without representation by a licensed attorney. The Committee noted, "The proposal in essence asks the committee to overrule caselaw, and it is generally not the role of the committee to attempt to overrule caselaw. An appeal would be an appropriate means to raise this issue, e.g., as an amicus." Supreme Court Advisory Committee on the Rules of General Practice, Meeting Summary, at 9-10 (Apr. 23, 2009).

The proposed rule would sanction the unauthorized practice of law by agents of regulated entities in the filing of actions and conduct of arraignments, and only prohibit the practice at evidentiary hearings. The Minnesota Supreme Court has not distinguished between evidentiary hearings and other practice in the courts when determining what constitutes the unauthorized practice of law. Rule 603 should not either.

#### **Unregulated Entities**

At the time, we drafted Rule 603, many landlords were individuals and companies not regulated by the Secretary of State that used agents for eviction actions. Rule 603 required an authorization for such agents to appear.

The provision on agents suing only in the name of principals was based on the recognized principle that the parties in actions be real parties in interest.

## Proposals

If this committee proposes a new rule, it should clarify the law but not change the law. The proposed rule changes the law. The earlier option 2 is the correct approach.

“Proposed Revised Rule 603 (Option 2)

An eviction action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name.

A landlord who is an individual, sole proprietorship, or partnership may appear in Housing Court as a self-represented litigant. A licensed attorney must sign the complaint and appear in court on behalf of a corporation, limited liability company, limited partnership, limited liability partnership, and limited liability limited partnership.”

Option 2 maintains the law on agents and principals, and clarifies that Rule 603 did not and will not change the law of attorney representation of corporations and other regulated entities.

Thank you for your consideration.

**Lawrence R. McDonough**  
**Pro Bono Counsel**



DORSEY & WHITNEY LLP

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#### 4. Luke Grundman email 3/18/2018

Hello Anna, Referee Labine and Referee Houghtaling.

Thank you very much for collecting our input as you work on this proposal. I am happy to discuss this with the bigger group. But I wanted to explain in writing why Legal Aid opposes the new language. Although several others from our office and other tenant advocates will respond with legal and historical arguments against this proposal, I will focus this one on policy. **We believe the proposal will undercut goals of the court system and judicial efficiency.**

**First**, agent representatives make settlement more difficult. They often appear with little or no settlement authority. Unlike lawyers, they fail to appreciate a valid defense when presented with one. Their failure to understand and appreciate the law makes it harder for them to understand when they are on the wrong side of it. To be fair, some agent representatives are reasonable and still settle cases. But even the most reasonable fail—when not trained as lawyers—to properly evaluate the merits of a case and force cases unnecessarily to protracted litigation.

**Second**, agent representation—even at the first appearance stage—leads to more eviction filings. Forcing a landlord to hire a lawyer forces it to try harder to settle a case before filing. Filing fees do not create sufficient disincentive to file, since landlords accept to collect them from tenants at the hearing. An attorney's cost—which in most cases will not be recoverable—will encourage landlords to communicate better with tenants and attempt to resolve unpaid rent claims before filing. Anecdotally, one large landlord informed me at a recent hearing that the company had changed its policy to file evictions on the 10<sup>th</sup> of the first month in which rent is delinquent. Using housing court as the bill collector of first resort leads to unnecessary filings, more social resources (Court staff, mediators, Legal Aid), and long term damage to the tenant in the form of negative rental history reporting.

**Third**, the Court has less control over the conduct of non-attorney representatives. Attorneys must behave ethically or face censure and possibly, the loss of a license. When judicial officers tell attorneys to do something, most attorneys know that they must do so. For the most part lawyers know to treat judicial officers and their staff respectfully and other lawyers civilly. This is not true for many non-attorney agents. As manager of the housing unit, I have dealt with numerous instances of incivility between my staff and those representing landlords. Without exception, the most egregious circumstances involve non-attorneys.

In lieu of the current proposal, I respectfully request that you return to Option 2 among the original proposals you circulated in August.

Thank you very much for your time.

Sincerely,

Luke

Luke Grundman  
Managing Attorney, Housing Unit  
Mid-Minnesota Legal Aid  
(612) 746-3640

## 5. Todd Liljenquist email 3/16/2018

Referees Labine and Houghtaling and Ms. Lamb:

Thank you for soliciting feedback on the proposed rule changes. I am not sure I will be able to attend the March 22<sup>nd</sup> Bench & Bar meeting so I wanted to communicate our thoughts. We greatly appreciate the compromise language. Removing agent representation entirely would have been exceedingly burdensome, costly, and in our opinion, unnecessary (not to reiterate the thoughts I shared in the prior survey). I shared the proposed language with our attorney members and I only received one comment which I thought I should pass on to you:

My only comment is that I don't think the proposed new rule makes it clear that licensed attorneys are not required to obtain and file a Power of Authority form in order to represent a party in housing court. I doubt that the new rule intends to impose such a requirement, but some more clarity on the issue would be helpful.

Thanks again.

Todd Liljenquist  
Vice President of Government Affairs  
Minnesota Multi Housing Association  
(952) 548-2204  
[REDACTED]

## Todd Liljenquist Email dated 4/5/2018.

Referees Labine and Houghtaling:

Thank you for soliciting feedback on the proposed Housing Court rule changes. The Minnesota Multi Housing Association supports the proposed change to Rule 603 of permitting non-attorney agents to appear in preliminary hearings on behalf of business entities while subsequently requiring attorneys for evidentiary hearings. Prohibiting agent representation entirely in Housing Court would be exceedingly burdensome, costly, and in our opinion, unnecessary.

It has been recognized by the courts that the current Housing Court Rule 603 permits non-attorney managing agents to appear on behalf of business entities and the proposed rule change would continue to allow such appearances in preliminary hearings.

**We recognize that two exceptions exist to the rule that corporations must appear through a licensed attorney in court.** Corporations and other entities may appear without an attorney in conciliation-court proceedings. *See* Minn. R. Gen. Pract. 512(c) (“A corporation, partnership, limited liability company, sole proprietorship, or association may be represented in conciliation court by an officer, manager, or partner . . .”). In addition, **landlords may appear through lay**

**agents in the specialized housing courts of Hennepin and Ramsey Counties.** *See* Minn. R. Gen. Pract. 603 (stating that “[n]o person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing”); Minn. R. Gen. Pract. 601 (stating that rules 601 through 612 apply to proceedings in Housing Court in Hennepin and Ramsey Counties). Hinckley Square initiated this action in Pine County district court, so neither of these exceptions applies. *Hinckley Square Associates v. Cervene*, Appellate No. A15-0496 (Minn. App., Nov. 9, 2015) (emphasis added); *see also* *Walnut Towers v. Schwan*, File No. A07-1311 (Minn. App. Sept. 16, 2008) (recognizing “the supreme court’s adoption of the rules for the ‘housing courts’ in Hennepin and Ramsey counties, which permit incorporated landlords to appear without counsel, if their agents have the required ‘Power of Authority.’”)

Members of our association were involved at the inception of the Housing Courts which were originally created to provide an expedited process in the counties where a large portion of housing-related actions, primarily eviction actions, take place. The “Power of Authority” system, allowing non-attorney managing agents to represent a business entity, furthers that goal. Eviction actions are primarily summary proceedings, similar to conciliation court actions, in that an eviction action is solely about who has the legal right to possess the rental unit, and the courts permit agent representation in conciliation court where claims may be brought for amounts up to \$15,000 which is a significant amount of money by anyone’s standards.

The “Power of Authority” process has worked exceedingly well over the years. Non-attorney managing agents are fully qualified to represent owners and management companies in Housing Court. They are consistently well-prepared to appear before the referees and often have direct and personal knowledge of the facts in the dispute.

Many attorneys who represent property managers do not want to and do not see a need to get involved in the least complicated, summary hearings in Housing Court. Tenants may actually be better served as some attorneys are more interested in evicting the resident rather than negotiating with them.

It has been suggested that the Housing Court rules should require attorney representation **of business entities in all situations in order** to increase the costs of filing eviction actions which would create a disincentive for landlords to file eviction actions. We find this suggestion extraordinarily troubling. Short of reaching an agreement with a tenant, the eviction process is the sole remedy available for a landlord to regain possession of a rental unit. For the vast majority of landlords, eviction actions are a last resort and are not filed without thoughtful consideration. We are supportive of looking at ways to reduce the number of eviction actions, for example, by expediting emergency assistance funding. What we cannot support and find terribly troubling are suggestions that additional barriers to a legal remedy should be created by increasing the cost of pursuing that remedy.

Finally, the cost of requiring attorney representation in all Housing Court eviction actions would largely be borne by tenants through increased rents. When a landlord must file an eviction action, and is unable to collect unpaid rent or court costs, those costs must be amortized over the course of the budget cycle and would likely lead to rent increases for all tenants. In addition, most leases provide for attorney's fees so the landlord would have a separate legal claim against the tenant for attorney's fees if required to be represented in all eviction actions. Both of these cost increases could have a direct impact on housing affordability which is already a serious issue in Minnesota.

In summary, the Minnesota Multi Housing Association supports the compromise proposed change to Housing Court Rule 603.

Respectfully submitted,

Todd Liljenquist  
Vice President of Government Affairs  
Minnesota Multi Housing Association

## 6. Elizabeth Sauer email 3/15/2018

I have very serious concerns about the proposed changes to Rule 603 as currently proposed. I believe that it would be preferable to keep Rule 603 as it currently reads than to make these proposed changes. I would have supported the changes previously proposed. However, this new proposal achieves the opposite result of the original proposal. This proposal will negatively impact my clients by allowing non-attorneys to practice law

The proposed rule is in direct conflict with the Minnesota Supreme Court's decision in *Nicollet Restoration vs. Turnham*. Moreover, the proposed comments explicitly contemplate allowing lay agents to engage in the unauthorized practice of law at first appearances in Hennepin and Ramsey counties.

I believe that the Court's reasoning in *Nicollet Restoration* is sound, and applies just as much to eviction cases as it does to any other proceeding—perhaps more so, given the expedited nature of the proceedings, limited availability of discovery, and serious result of causing a family to become homeless. As an attorney, I put my law license on the line every time that I submit a pleading or make an assertion to the court, and I take my duties of professional responsibility very seriously. A lay agent appearing on behalf of a corporate entity owes no duty of candor to the court, is not bound by Rule 11, and cannot be sanctioned by the court because they are not a party. Their interest is in obtaining a particular result for their client. In many cases, they do not even have personal knowledge of the allegations made in the Complaint. It is difficult for my clients to have to deal with such individuals when they are risking the loss of their housing.

The proposed rule is also in direct conflict with the Rules Committee's comments from 2009, when a very similar change to Rule 603 was sought allowing lay agents to appear on behalf of corporations in housing court. That request was made by the Minnesota Multi-Housing Authority in response to the Court of Appeals' decision in *Walnut Towers v. Schwan*. At that time, the Rules Committee noted that this issue had been decided in *Nicollet Restoration* and stated that it "does not arrogate to make any recommendation on this issue."

A corporate entity is created to protect business people from personal liability for their actions in connection with the business. There are trade-offs for that significant benefit—one of which is needing to act through a licensed attorney when commencing or engaging in court actions.

As a practical matter, lay agents appearing on behalf of a business frequently have very little authority to settle a case. They have very limited understanding of the applicable law, are often unfamiliar with the relevant facts which impact the strength or defects in their case. This makes settlement exponentially more difficult, and drags out cases unnecessarily. It makes it easier for landlords to file evictions, and more difficult to deal with their agents.

Eviction actions are as important as they are numerous, exhausting, and expedited. They impact some of the most basic rights of Minnesotans—and, specifically, those living in poverty who



qualify for help with Legal Services. There is no reason to carve out an exception to long-standing and extensive Minnesota case law to allow for the unauthorized practice of law in the housing division of the district courts in the Second and Fourth judicial districts.

Sincerely,

Elizabeth F. Sauer  
*Supervising Attorney*  
Central Minnesota Legal Services  
430 First Avenue North, Ste. 359  
Minneapolis, MN 55401-1780  
Phone: (612) 332-8151  
Direct: (612) 746-3778  
Fax: (612) 334-3402

## 7. Melissa Kantola email 3/5/2018

Good afternoon everyone.

After having a chance to discuss this more with Anna (thank you Anna for providing me with some of the history and more information behind the proposed change), we are in support of the rule change. Our concern relates to individuals appearing on behalf of other individuals and that is something we would prefer be addressed through a possible change to the statute relating to the unauthorized practice of law. However, since that particular issue is not really impacted in the proposed rule change, we are okay with the proposed changes.

Thank you.

-Melissa

**From:** Kantola, Melissa

**Sent:** Monday, March 5, 2018 12:30 PM

**To:** Lamb, Anna [REDACTED]; Labine, Mark  
[REDACTED]; Houghtaling, Melissa  
[REDACTED]

**Cc:** Bechtle, A. Kate [REDACTED] Kelly Cveykus  
[REDACTED]

**Subject:** RE: Proposed Housing Court Rule Change to 603 -- Agents

Good afternoon Anna, Referee Labine, and Referee Houghtaling.

On behalf of myself, Kate, and Kelly, we do not support the proposed change to Rule 603.

Kate will be attending the March meeting on our behalf.

-Melissa

**Melissa C. Kantola**

**Manager, Self-Represented Litigant (SRL) Program**

Court Services Division

State Court Administrator's Office

Minnesota Judicial Branch

25 Rev. Dr. Martin Luther King Jr. Blvd.

St. Paul, MN 55155

612-596-8812 Hennepin County Government Center

651-297-7581 Minnesota Judicial Center

**8. M.J.Bauer, two emails, March 5, 2018 and April 4, 2018.**



Dear Referee Labine, Referee Houghtaling, and Ms. Lamb:

Thank you for the opportunity to comment on the proposed changes to Minn. Gen. R. Prac. 603. Our responses are from the perspective of mediators who work within the Housing Court system.

In our experience, agent representation at the initial appearance makes mediation difficult or impossible, and results in increased evictions. Often agents are unwilling or do not truly have authority to mediate with tenants. Agents frequently do not know the facts of the situation and have been provided with limited settlement authority. These circumstances do not allow for mediation to take place. Furthermore, an agent's ability to recover their fees from the tenant acts as a disincentive to taking the time to reach a mediated settlement which is more likely to last, and encourages rapid hallway agreements that are often unrealistic and do not last.

As mediation providers we have an even broader goal to encourage landlords and tenants to mediate prior to an eviction filing. Mediated conversations between landlords and tenants prior to the eviction filing often eliminate the need for an eviction filing and stabilize housing and eliminate the negative impact on the tenant of having an eviction filing on their record. These pre-eviction mediations also decrease the burden on the court system. But, allowing agent representatives at the first appearance streamlines the eviction process for landlords and discourages early mediation. Requiring a landlord to hire an attorney for the first appearance will encourage communication between landlords and tenants prior to the eviction filing.

Finally, as you know, Hennepin County contracts with 2 Community Dispute Resolution Programs to provide mediation services at Housing Court. In cases with agents that are unwilling to mediate, this excludes an increasingly large group of tenants from accessing these mediation services provided by the Courts.

We would support a return to Option 2 of the proposed Revised Rule 603.

Thank you very much for your time.

Sincerely,

M.J. Bauer, Executive Director, Conflict Resolution Center  
Dawn Zugay, Housing Mediation Program Manager, Conflict Resolution Center

We are also in support of the opinions submitted by:  
Lawrence R. McDonough, Pro Bono Counsel at Dorsey Whitney  
Luke Grundman, Managing Attorney, Housing Unit, Mid-Minnesota Legal Aid  
Drew P. Schaffer, Executive Director, Mid-Minnesota Legal Aid

## **9. Paul Birnberg, Homeline, email**

Dear Referee Labine, Referee Houghtaling, and Ms. Lamb:

I am writing regarding the proposed change to Minnesota General Rule of Practice 603 ("Rule 603"). I think it is a bad idea.

I've had a chance to read some of the other comments you've received and so I try below to avoid repeating their points and just to outline my other concerns. Here are my concerns:

[1] The proposal will slow down court proceedings and lead to more dismissed (and thus refiled) cases. Attorneys tend to be more efficient and more up on the law than non-attorneys. This will cost the court time and thus money. While it might make the process cheaper for a subset of litigants it does not make the process easier for anyone.

[2] The proposal denigrates the court and suggests Housing Court is some sort of second-class operation. This is not the case. Eviction cases are obviously important cases since someone's home is at stake. The other cases this court hears – lockouts, rent escrows, and other repair cases -- are also important cases.

[3] I view this as special-interest "legislation" – special-interest rule making. The beneficiaries would be stockholders of corporations / members of LLCs. As discussed in #1, most of the other stakeholders would lose under this change.

Stockholders and LLC members have made a calculated financial decision. They formed a corporation or LLC knowing that this entailed some extra costs – an annual filing fee with the Secretary of State, perhaps CPA fees to file corporate taxes, and the occasional hiring of an attorney to litigate cases. In return, the stockholders obtain the corporate shield for debts and some favorable tax treatment. This favorable tax treatment is usually the reason landlords and other small businesses form corporations and LLCs. I know this personally because that is why I formed Birnberg Law Firm Ltd. when I was in actual fact a solo practitioner. A recent example of the tax benefits small landlords who operate as corporations have received is the Super-199 provision in the recent "tax reform" legislation that applies a 20% reduction in taxable income to S corporations and many LLCs. Given the cost to the court from the change, it's not clear why these already favored entities need another financial break.

[4] As best I can figure, roughly half of our Bench and Bar committee thinks this is a bad idea and roughly half think something along these lines is a good idea. Historically, when Bench and Bar has forwarded proposals to the Supreme Court and its subcommittees, we've tried to reach a consensus. I think the original Part 600 rules were drafted on a consensus basis. I know that some years ago during Ref. Labine's first stint, when I chaired a subcommittee that worked out proposed



changes to the language of the Writ of Recovery, we worked by consensus and the result was an legislative change that has been a positive one. Conversely, when the bench tried to unilaterally eliminate Judge Review in 2011, that foundered at the legislature; when the bench worked with all the stakeholders a couple years later to retain Judge Review but eliminate Judge Demand, that legislative proposal succeeded. Bench and Bar's submitting a controversial proposal troubles me.

Please do forward my comments to the other stakeholders and the appropriate committees (revealing my name).

Sincerely yours,

Paul Birnberg

Paul Birnberg

Senior Housing Attorney

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## 9. Matt Engel Letter dated April 5, 2018



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April 5, 2018

Hennepin County Housing Court  
Attn: Referee Mark Labine  
Attn: Referee Melissa Houghtaling  
300 South Sixth Street, C-300  
Minneapolis, MN 55487

***RE: Comment on proposed Housing Court rule changes  
Rule 603 & Agents acting in Court under a Power of Authority***

Dear Referees Labine and Houghtaling,

Thank you in advance for extending the deadline to accept commentary on the above issue.

For the following reasons, my view is that I strongly oppose the provisions of Rule 603 that allow an agent to appear in Housing Court on behalf of another under a Power of Authority:

- I believe that allowing agents and lay advocates to represent individuals and/or business entities (for a fee, no less), is the unauthorized practice of law.
  - This rule allowing non-attorney representation is also contrary to every other county in the State of Minnesota. I believe appearances in Housing Court should be consistent with all other civil cases.
  - As discussed further below, I don't believe that an unfounded perception of cost savings to low-income landlords in Hennepin County should allow non-attorneys to appear on behalf of another in a court of law.
- As I expressed verbally at the Bench and Bar meeting on March 22, it appears that the unquestioned theory behind allowing non-attorney agents to appear under a Power of Authority for landlords is that it allows a cost savings to low-income landlords.

- To the contrary, many attorneys who represent landlords, like myself, charge the same, if not less, than the non-attorney agents who charge landlords fees to appear in Hennepin County Housing Court.
- In my 17 years of practicing law and representing landlords, I have yet to meet a low-income landlord. From this perspective, I would ask the Court to consider how many IFP applications they have received from landlords.
- In my discussions with legal aid attorneys, I have learned that a fair amount of cases filed by non-attorney landlord agents get dismissed for failure to follow the statutory requirements for service of process or other issues. If more non-attorney landlord agents are forced to “start over” because they continue to make mistakes, how is this a cost saving to the landlords?
- The only stakeholder at the Bench and Bar meeting to express a desire to continue to allow non-attorney agent representation in a court of law was the Minneapolis Public Housing Authority. Their reasoning was their unwillingness to pay attorneys to appear in court – citing their tight budget.
  - Here is a link to the draft MPHA Annual Plan: <http://mphaonline.org/wp-content/uploads/2017/08/Draft-MPHA-2018-MTW-Plan-Blacklined-8-7-2017.pdf>.
  - It appears that the MPHA operates with a budget close to \$100 Million Dollars. It is disingenuous to think that they cannot afford legal counsel or at least use their house counsel for housing court matters.

In sum, I do not agree with the opinion that the use of non-attorney agents “keeps expenses for all parties down.” Hennepin and Ramsey Counties should not provide special rules for non-lawyers that are contrary to the rest of the counties in the State of Minnesota.

Best regards,  
THE ENGEL FIRM, PLLC

*/s/Matthew A. Engel*

Matthew A. Engel